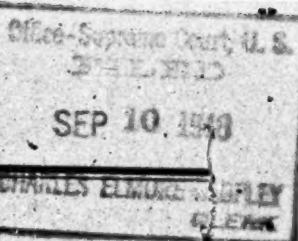


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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1948.

No. 109

FEDERAL POWER COMMISSION, *et al.*

v.
INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *et al.*

No. 188

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

v.
INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *et al.*

No. 209

MEMPHIS LIGHT, GAS AND WATER DIVISION

v.
INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *et al.*

No. 212

ILLINOIS COMMERCE COMMISSION

v.
INTERSTATE NATURAL GAS COMPANY, INCORPORATED, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF OF MISSISSIPPI RIVER FUEL CORPORATION
IN OPPOSITION.**

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
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FOR THE FIFTH CIRCUIT.

**BRIEF OF MISSISSIPPI RIVER FUEL
CORPORATION IN OPPOSITION.**

Statement.

The situation of Mississippi River Fuel Corporation (hereinafter referred to as "Mississippi") in respect of the fund impounded in the registry of the Court below is peculiar. It will be necessary, therefore to detail with some particularity what has transpired both in the Court below and as to Mississippi's own rate situation.

The general background of the proceedings in the Court below, as set forth in the statement contained in the petition filed on behalf of the Federal Power Commission in Case No. 109, is adopted by Mississippi, except in so far as it is necessary to add to it and correct it. In the first place, Mr. Frank H. Lerch is not, and has not been for some years past, President of either Interstate Natural Gas Company (hereinafter referred to as "Interstate") or Mississippi River Fuel Corporation or any Standard Oil Company (N. J.) affiliate, and since the record was made in the original Interstate rate case (No. 733, October Term, 1946) Standard Oil Company (N. J.) has disposed of all of its interests in Mississippi River Fuel Corporation (see Commission brief, p. 17). Affiliation between Interstate and Mississippi on account of interests of Standard Oil Company (N. J.) no longer exists.

Mississippi provides the only ground for intervention in this matter by the Public Service Commission of the State of Missouri (hereinafter referred to as the "Missouri Commission"), the Petitioner in No. 188, and the Illinois Commerce Commission (hereinafter referred to as the "Illinois Commission"), the Petitioner in No. 212 (R. 68, 92). Since the record was made in the Court below Mississippi has settled its rate case instituted by the Federal Power Commission (hereinafter referred to as "Power Commission") by stipulation arising as a result of a remand

to the Power Commission by the Court of Appeals for the District of Columbia (*Mississippi River Fuel Corporation v. Federal Power Commission*, 163 F. 2d 433). The stipulation settling the case provided that Mississippi file rate schedules for the period from January 20, 1946 (the effective date of the Commission's order against Mississippi) through and including the month of September 1947 at a rate less than that to be applicable after such period so as to give effect to the affirmance of the Power Commission's rate order in the Interstate case. All of this is recited in said stipulation and on July 20, 1948 the Power Commission accepted the filing of such rate schedules and terminated its proceeding against Mississippi. (See stipulations annexed hereto as Appendices "A" and "B"; see also Power Commission brief, p. 15n.)

Accordingly, Mississippi will direct its brief in the main to the contentions of the Missouri and Illinois Commissions and to their standing to question the judgment of the Court below. The Power Commission has directed its petition to the judgment of the Court below generally and, therefore, Mississippi must answer it. The petition of Memphis Light, Gas & Water Division (hereinafter referred to as "Memphis") (No. 209), while directed mainly to the right of Memphis Natural Gas Company (hereinafter referred to as "Memphis Natural") nevertheless requests that the petition of the Federal Power Commission should also be granted.

The Power Commission apparently seeks to stand before this Honorable Court as the representative of all of the consumers involved in the downstream sales made by Interstate. In its brief in opposition, Interstate has pointed out that the Power Commission has exhausted its jurisdiction in the premises in so far as Interstate is concerned.

It should also be pointed out that the Power Commission has by a final order disposed of its rate investigation of Mississippi and has, therefore, exhausted all of its jurisdiction in respect of the past rates of Mississippi.

The Missouri Commission is limited in its representation to the consumers in Missouri receiving gas indirectly from Mississippi and the Illinois Commission is limited in its representation to the Illinois consumers receiving gas indirectly from Mississippi. The settlement of the Mississippi rate case as pointed out above has given to the distributing companies serving all of these consumers that portion of the reduced rate ordered in the Interstate case accruing since the effective date of the Commission's rate determination against Mississippi.

ARGUMENT.

I.

Jurisdiction.

Mississippi objects to the granting of certiorari pursuant to any of the petitions filed in this matter in so far as the review accorded under such certiorari would affect it on the ground that all questions which properly could be before the Court below or before this Court upon review have become moot and nonjusticiable. Mississippi, as the Commission admits (Commission brief p. 15n), has given effect to the Interstate rate reduction for the total period from the time the Power Comission order was effective against Mississippi (i.e. January 20, 1946) up until the time the New Interstate rates became effective. Thus, all consumers indirectly supplied by Mississippi wherever

situated are in position to receive every benefit which they would have received had Mississippi on the effective date of the Commission's rate order against it immediately have filed new rate schedules giving effect as of that moment to the reduced rate ordered in the Interstate case and had the local distributing companies immediately passed on that reduction. Prior to that time, the money paid by Mississippi and impounded pursuant to the order of the Court below represented a part of the rate paid to Mississippi under the only effective rate schedules then in force and free from all claims for reparations (*Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 618; *Mississippi Power & Light Company v. Memphis Natural Gas Company*, 162 F. 2d. 388 (C. C. A. 5)).¹

As a result of the above facts and the principles that the Natural Gas Act does not give the Power Commission jurisdiction to award reparations and that "a natural-gas company" may charge for its gas sales to its resale customers only that rate on file with the Power Commission, the ultimate consumers of Mississippi now can obtain through their state rate fixing bodies all that they ever could gain—exactly as though a stay had not been granted in the Interstate rate case and as though Mississippi had

¹ In this connection it should be noted that the Power Commission's own rules provide:

"No natural gas company shall directly or indirectly demand, collect, or receive, for the transportation or sale of natural gas subject to the jurisdiction of the Commission, or for the lease or utilization of any facilities subject to the jurisdiction of the Commission, any rate or charge different from that prescribed in its rate schedule or schedules actually on file with the Commission, unless the Commission shall, for good cause shown, otherwise provide by order." (General Rules and Regulations of Federal Power Commission (Effective Jan. 1, 1948) Part 154.2, 12 Fed. Register 8598.)

put into effect and passed on to its distributing company customers the benefits of the wholesale price it paid to Interstate immediately upon the Power Commission's rate determination. So it is apparent that Mississippi's ultimate consumers have gained all that they are entitled to gain no matter what is the outcome of the several petitions for certiorari filed in this matter. It cannot be contended, therefore, that questions as to the rights of such ultimate consumers of Mississippi are any longer justiciable. A supervening fact which renders a question moot may be considered by your Honorable Court in determining the right to review. (*Public Utilities Commission of Ohio v. United Fuel-Gas Company, et al.*, 317 U. S. 456, 466.)

In addition, it has been pointed out in the response of Interstate to the several petitions in this matter that the Power Commission no longer has any interest in this proceeding. The argument presented in that matter in the Interstate brief is adopted hereby by Mississippi. As a further determinative, however, Mississippi points out that in so far as the Power Commission has a standing to seek review on behalf of ultimate consumers of Mississippi (which standing Mississippi hereby denies), again there is no interest so to be represented because the interests of such ultimate consumers have been merged in the stipulation and satisfied in the Commission prescribed rate which gave effect to the Interstate rate order to the fullest extent of Power Commission jurisdiction.

Merits.

As to questions of the right of any claimant to the fund in court in view of the equitable factors and discretion in management involved, Mississippi adopts generally the argument contained in the opposition brief filed on behalf of Interstate. Certain considerations, however, have peculiar significance in so far as Mississippi is concerned.

a. Only Legal Rates Have Been Charged.

Mississippi because of the posture of its rate situation has charged nothing but the only legal and effective rates it could charge during the whole of the impoundment period. It has been pointed out above (see footnote 1) that under the applicable law, only those rates on file with the Power Commission can be charged by a "natural-gas company". And there is no question but what Mississippi has charged only the filed or Power Commission prescribed rates. Pursuant to the Power Commission rate order against it, Mississippi filed the new rates and did not seek a stay of the Commission's order pending the successful review thereof. (Stipulations, Appendices "A" and "B"). The controversy after remand was settled by stipulation as aforesaid. All contentions, therefore, that a stigma of illegality has attached to Mississippi rates are entirely without foundation. The rate determinations of the Commission and the rate previously filed pursuant to its rules had the effect of legislation, and as a result thereof was a protection to Mississippi (see *Arizona Grocery Company*

v. Atchison, Topeka & Santa Fe Railway Company, et al., 284 U. S. 370, 386-388).

Since the Federal Power Commission has no reparation authority (*Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 618) and since Mississippi, in any event, charged only what it could charge under the applicable law, there would appear to be no question as to its right to the part of the total fund contributed by it whether accruing or paid before or after the effective date of the Power Commission's rate order in the Mississippi rate investigation.

b. The State Regulatory Function.

It is apparent from the record in this case that since this Court's decision in *Panhandle Eastern Pipe Line Company v. Public Service Commission* (332 U. S. 507) the Illinois Commission and the Missouri Commission have instituted proceedings to determine whether direct sales made by Mississippi in the States of Illinois and Missouri are subject to the jurisdiction of those commissions (R. 74-75). It is not known what the outcome of these proceedings will be. It is not known, nor has the Court below been advised, as to the extent of the authority of these two state commissions in the matter of awarding reparations in the event that said state commissions are presently authorized by applicable state law to regulate Mississippi's direct sales.

Since the decision by your Court in the *Panhandle* case (*Supra*) it is clear that where a natural gas company is making direct sales, its functions in such respect are state regulable and without any inhibitions from either the Federal Constitution or the Federal Natural Gas Act. Therefore, if the Court below is to hand out Mississippi's contri-

butions to the fund now in dispute, it would be engaging in a function reserved to the states and, in fact, would be engaging in local regulation. It cannot be determined where the gas which Mississippi purchases from Interstate finally ends and impossible to know what percentage, if any, of such gas actually was delivered by Mississippi to customers in Illinois and Missouri (R. 88, 95-96). Faced with this situation, it would be utterly impossible for the Court below in the administration of the fund to give to each ultimate consumer any portion of the funds without engaging in the rate making function of allocation (see *Colorado Interstate Gas Company v. Federal Power Commission*, 324 U. S. 581, 590).

In the brief filed by Interstate the implications of engaging in such rate making function are set forth more fully and the discussion contained therein is hereby adopted. The whole question of this rate making function is peculiarly applicable to Mississippi because of the fact that it presently is faced with a possibility of state regulation of its direct sales and may well face inquiry into the reasonableness of its back rates and, assuming statutory authority therefor exists, possibly face reparation liability in respect thereof over and above any awards made from the fund by the Court below. On the other hand, it may be determined that its direct sale rates are reasonable and that no reparations, assuming reparation authority of the state commissions, are due on account of past rates. In the latter case, Mississippi would then have been deprived of the portion of the fund by a Federal Court in respect of a state matter which by proper state authority will have been held not to be due and owing.

c. The Portion of the Fund Accumulated Before
the Mississippi Rate Order,

The claims of all Petitioners are to the total amounts in the fund without regard to whether these amounts have been paid in by Mississippi before or after January 20, 1946 (the effective date of the Power Commission rate order against it). As to the amounts paid by Mississippi after January 20, 1946, there would appear to be no question that since it has under the aegis of the Power Commission given effect to the lower Interstate rate in respect of its resale customers, that Mississippi is entitled thereto. As to the amount accumulated before such date, Mississippi was collecting from all resale customers the only legally effective rates which it could charge, as has been pointed out above. Now to require Mississippi to return the amounts deposited prior to January 20, 1946 would not only be tantamount to the Power Commission awarding reparations which in the *Hope* case was held to be beyond its jurisdiction, but also would require the Court below to enter into the nonjudicial function of determining the reasonableness of all of Mississippi's rates from the time impoundment began and without regard to the question of whether Mississippi might later be charged or benefited by the orders of a competent state regulatory agency.

All cases, even remotely relevant, cited by Petitioners are distinguishable in the case of Mississippi because either the regulatory agency involved had complete jurisdiction over all of the sales of the industry involved or had such reparation authority as to give rise to a continuing claim for past damages (Cf. *United States v. Morgan*, 307 U. S. 183).

Viewed realistically, the situation in reference to Mississippi is as follows:

Beginning in June 1943, it was compelled by the operation of the stay order to continue paying to Interstate the same amounts for gas that it had paid previous to the Power Commission rate order against Interstate. It was not until January 20, 1946 that any determination had been made effective in respect of the reasonableness of Mississippi's resale rates. On such date Mississippi effected the lower rates, subject to court review. Since that time such review has been had and by rates now on file with the Commission, the reduction in price of Interstate gas to Mississippi has been passed on in accordance with the Power Commission's order accepting such rates for filing. Had no stay been granted in the Interstate case, Mississippi would have been entitled to keep all of the money represented by the difference between the old Interstate rate and the Power Commission prescribed Interstate rate. It would have been perfectly legal and proper for it to have done so. How then can it be said that it would not now be legal, proper and equitable for Mississippi to have turned over to it its aliquot portion of the fund? The answer is that in justice and equity Mississippi is entitled to its share in the fund. (See *Atlantic Coast Line Railroad Company v. Florida*, 295 U. S. 301, 309-311.)

d. *Central States Electric Company v. City of Muscatine* (324 U. S. 138).

All petitioners are erroneously assuming that the court below decided this case solely upon the authority of the *Central States* case (*Supra*). In the brief in opposition filed on behalf of Interstate, it is pointed out that the court

below did not decide this matter solely in reliance upon the *Central States* case. To the extent therein set forth, Mississippi adopts the argument of Interstate. This matter, however, is labored particularly hard in the brief in support of the petition of the Illinois Commission. Mississippi is constrained, therefore, to answer the contentions set forth therein.

(i) The Illinois Commission contends that in this case, but not in the *Central States* case, the immediate purchasers are themselves "natural-gas companies" whose sales are not subject to state regulation (Illinois Commission brief, pp. 12-17). The Illinois Commission overlooks the important fact that in the case at bar the funds accumulated represent not only amounts paid for the purchase of gas for sales which are federally regulable, but also represent money collected for sales which have been held by this Court to be regulable by the states, assuming that the states have given to their proper administrative agencies the necessary authority to do so. *Panhandle Eastern Pipe Line Company v. Public Service Commission*, 332 U. S. 507. Therefore, for the court below to have handed out the fund without regard to this fact would have necessitated either ignoring the possible jurisdiction of state agencies in the premises or determination of questions of state law.

(ii) The Illinois Commission next contends that in the case at bar, but not in the *Central States* case, Mississippi was receiving at least a fair return. (Illinois Commission brief, pp. 17-18). It nowhere appears in the case at bar that Mississippi was earning a fair return upon the whole of its business. The only determination of a fair return was effective as of January 20, 1946, and this determination

in no wise related to the question of fairness of return upon the company's direct industrial business which is regulable, if at all, by the states.

(iii) The Illinois Commission contends that in the case at bar, but not in the *Central States* case the stay order provided that the funds were "to be returned to such ultimate consumers of gas, or other persons to whom the Court finds the same should be returned, as contemplated by the Natural Gas Act.", (Illinois Commission brief, pp. 19-21). This provision in the court's order did not bind it to return the funds only to one class or to one group. In exercising its equity powers the court below "entered into no contract or understanding with the litigants; it entered into no undertaking as to the manner of disposing of the fund; its duty with respect to it is that prescribed by the applicable principles of law and equity * * *." *United States v. Morgan*, 307 U.S. 183 at 194.

(iv) Finally, the Illinois Commission contends that it is important for this court to determine whether the decision in the *Central States* case should be extended to the situation presented in the case at bar. (Illinois Commission brief, pp. 21-22). In the brief filed in opposition by Interstate it is pointed out that the decision of this case turns upon principles of law and equity which do not arise from the *Central States* case alone. Therefore, this case and the *Central States* case do not present a matter to be settled by this court. The principles upon which the court below decided this case are justifiable and proper from principles enunciated by this Honorable Court many times. (See Interstate brief in opposition, pp. 9 et seq.).

Conclusion.

As to Mississippi, it is respectfully submitted that the situation is clear and that its ultimate consumers are in position to obtain through action of appropriate state agencies all of the benefits to which they are entitled. It has given effect to the Interstate reduction for the total period of time during which there was impoundment and a definitive Power Commission order was operative against it. Prior to that time, it collected for its gas only the rates which were the legally allowable and required rates. By effecting a rate with the express approval of the Power Commission applicable to that portion of the impoundment period occurring from the time of the definitive Mississippi rate order to the time new rates were collected by Interstate, Mississippi has passed on all benefits which it possibly could pass on and still not give what might properly be called a rebate. If the petitioners are contending that Mississippi should give up all of its share in the Interstate fund from the time impoundment began until it ceased, without regard to when the Mississippi rate order was effective, the result would be that Mississippi would be giving up more than it would have given up had no stay been granted in the Interstate case. This is clear when it is realized that had no stay been granted in the Interstate rate case, Mississippi would immediately have had the benefit of the lower Interstate rate without liability to make reparations under the Natural Gas Act, while up to January 20, 1946, it could charge only its rate on file with the Power Commission. Thus, it is clear that Mississippi has not benefited from the stay order and that through the medium of state commissions and distributing companies, ultimate

consumers in Missouri and Illinois will benefit to the limits allowed in the Natural Gas Act. As to Mississippi, therefore, there is nothing before the Court.

Respectfully submitted,

WILLIAM A. DOUGHERTY

JAMES LAWRENCE WHITE
Attorneys for Mississippi River
Fuel Corporation.

i

Appendix A

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948.

No. 188.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

v.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, et al.

STIPULATION FOR ADDITION TO RECORD.

It is hereby stipulated and agreed by and between counsel for the Missouri Public Service Commission, Petitioner herein, and counsel for Mississippi River Fuel Corporation, one of the Respondents herein, as follows:

The Court may consider all of the facts set forth herein as an addendum to the Record in its consideration of the petition for certiorari, such facts being as follows:

1. The petition on pages 6 and 7 states as follows:

"Mississippi River Fuel Corporation is the pipe line which purchased gas from the Interstate Natural Gas Company, Incorporated, and resold it at wholesale in Missouri. During the impoundment period the Federal Power Commission issued an order requiring Mississippi to reduce its wholesale rates for gas, and in that order of the Federal Power Commission, there was a provision that if the Commission's order in the *Interstate Natural Gas Company* case was upheld, Mississippi should further reduce its rates by the amount withheld."

The order reducing rates of Mississippi was entered in Docket G-462 and the reduced rates were ordered effective for all billings made after January 20, 1946. Said order was affirmed in part and reversed in part by the United States Circuit Court of Appeals for the District of Columbia. (*Mississippi River Fuel Corporation v. Federal Power Commission*, 163 Fed. 2d 433.)

2. The order of the Circuit Court herein was entered May 12, 1947, rehearing denied July 28, 1947. Subsequent thereto a stipulation was entered into by and between counsel for the Federal Power Commission and counsel for Mississippi as follows:

**"UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION**

"IN THE MATTER

of

**MISSISSIPPI RIVER FUEL CORPORATION,
*et al.***

Docket
No. G-462.

**"STIPULATION SETTLING AND DISMISsing PROCEEDING
IN SO FAR AS IT PERTAINS TO
MISSISSIPPI RIVER FUEL CORPORATION**

In 1943, the Federal Power Commission, herein-after referred to as 'Commission', entered orders under the Natural Gas Act instituting an investigation of the reasonableness of all the rates subject to the Commission's jurisdiction then being charged by Mississippi River Fuel Corporation, hereinafter referred to as 'Corporation', and other respondents.

After hearings in the proceedings, confined to the rates of Corporation and without prejudice to the in-

vestigation of other respondents, the Commission on November 9, 1945 issued an opinion and order (3 F. P. C. 340) in the proceedings directing Corporation to reduce the rates charged and received for the transportation and sale of natural gas by Corporation in interstate commerce to its utility customers for resale for ultimate public consumption.

"Subsequent to the date of the issuance of the Commission's order of November 9, 1945 Corporation filed with the Commission supplements to its then effective rate schedules making the reduction in rates and charges ordered by the Commission. These supplements were to be effective for all bills based on meter readings made after January 20, 1946.

"As finally accepted for filing by the Commission, by order in this Docket No. G-462 dated April 22, 1947, said schedules contained a statement as follows:

"Mississippi River Fuel Corporation (herein called Seller) is filing in the United States Circuit Court of Appeals a petition to review the Order of the Federal Power Commission entered November 9, 1945, as amended November 30, 1945, in Docket No. G-462, reducing rates of Seller. Accordingly, the filing of this supplement is not done voluntarily but is made under protest and solely because of the compulsion of said Order, and to avoid penalties which might be incurred in the event of a refusal to comply therewith. Seller reserves all rights against the Purchasers of natural gas under the schedules to which the following provisions are filed as a supplement, to collect the rates and charges contained in said schedules (after due credit for the amount paid under this supplement) in the event said Order of November 9, 1945, as amended November 30, 1945, is modified or set aside by final court decree. Until said final court decree, all gas delivered to the Purchaser by Seller shall be billed at the rates and under the terms and conditions herein set forth. Seller

also will furnish the Purchaser with a monthly statement of the amount computed on the rates in effect prior to the filing of this Supplement.'

which statement was permitted to remain in said schedules without approval or disapproval by the Commission and solely as a means of notification to the public in general and to the customers of Corporation of the rights claimed by Corporation, and without prejudice to the right of the Commission to take such further action with respect to Corporation's rates and charges as the facts in law may permit or require.

"Subsequently the order reducing Corporation's rates was affirmed in part, and reversed in part, and the case remanded for further proceedings in accordance with the opinion by the United States Court of Appeals for the District of Columbia (Case No. 9181) decided May 28, 1947, petition for rehearing overruled July 28, 1947.

"The order reducing Corporation's rates also provided that when the order of the Commission reducing rates of Interstate Natural Gas Company, Incorporated, in Dockets G-149 and G-132 became validated by the Courts, Corporation should pass on the proper portion of that reduction to customers purchasing gas for resale. Such order was upheld by the Supreme Court of the United States, and the funds impounded with the United States Circuit Court of Appeals for the Fifth Circuit in that action have been ordered distributed to Corporation.

"During the interval from January 20, 1946 to the present date Corporation has made extensive additions to its pipe line system to meet the increasing demands of ultimate consumers served by the gas distribution companies served by Corporation. These increments to pipe-line capacity have resulted in greatly changed factors in the costs and operations of Corporation's pipe line system.

"In view of these circumstances and the prospect of further increasing costs and changes in methods of operations, it appears necessary in the public interest that adjustments equitable to both ultimate consumers and Corporation should be made in the rates and charges heretofore ordered by the Commission, commensurate with the service Corporation has been and now is being called upon to render to its gas distribution company customers for resale to ultimate consumers. Corporation's conditions of service now vary greatly from the conditions of service considered by the Commission when it issued its order of November 9, 1945.

"Wherefore, for the purpose of settling and terminating the proceedings in this matter in so far as it pertains to Corporation, it is hereby stipulated and agreed by and between counsel for the Commission and counsel for the Corporation as follows:

"Corporation will file with the Commission, and the Commission will accept for filing, supplements to the presently effective rate schedules of Corporation which shall provide for the following rates and charges:

(1) A supplementary rate schedule effective for all bills based on meter readings made after January 20, 1946 through and including the month of September 1947 having a net monthly rate for firm gas composed of a demand component of \$1.00 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries; and

(2) A supplementary rate schedule effective as to all bills rendered in October 1947 and continuing thereafter having a net monthly rate for firm gas composed of a demand component of \$1.12 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and

a net monthly rate for interruptible gas of 14 cents per Mcf. for all deliveries.

"The rates and charges specified for the period from January 21, 1946 through and including the month of September 1947 reflect and give effect to the reduction in rates of Interstate Natural Gas Company, Incorporated, for that period. While usually treated as a commodity cost, the reduction in this instance is given effect by reflecting it in the demand charge as above set forth.

"This stipulation is subject to the approval of the Commission, and upon approval by the Commission, the Commission agrees that it will dismiss the proceeding before it docketed as *In the Matter of Mississippi River Fuel Corporation, et al.*, Docket No. G-462, in so far as it pertains to Corporation.

May 4, 1948

/s/ BRADFORD ROSS
General Counsel ~~Federal~~
Power Commission
Attorney for Federal
Power Commission

April 21, 1948

/s/ WILLIAM A. DOUGHERTY
Attorney for Mississippi
River Fuel Corporation

Approved by the Federal Power Commission on May
4, 1948.

/s/ LEON M. FUQUAY
Secretary"

3. Pursuant to said stipulation rate schedules were filed to carry out the terms thereof and an order was

entered by the Federal Power Commission on July 20, 1948
as follows:

**"UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION**

"Before Commissioners:

Nelson Lee Smith,
Chairman;
Thomas C. Buchanan,
Claude L. Draper,
Leland Olds, and
Harrington Wimberly.

July 20, 1948.

"IN THE MATTER
of
MISSISSIPPI RIVER FUEL CORPORATION,
et al.

Docket
No. G-462.

**FINDINGS AND ORDER ACCEPTING THE FILING OF
SUPPLEMENTAL RATE SCHEDULES AND
TERMINATING PROCEEDING.**

"Upon consideration of the orders previously entered in this proceeding and the stipulation entitled 'Stipulation Settling and Dismissing Proceeding in so far as it pertains to Mississippi River Fuel Corporation' entered into by the General Counsel for the Commission and Counsel for Mississippi River Fuel Corporation ('Mississippi'),

"The Commission finds that:

- (1) On January 18, 1946, Mississippi tendered supplements to its then effective rate schedules for

filings in purported compliance with the requirements of the Commission's orders of November 9, 1945, and November 30, 1945, which supplements were rejected, and on August 6, 1946, Mississippi submitted revised supplements to the then effective rate schedules which were accepted for filing by order issued September 30, 1946, as modified by order issued April 22, 1947, subject to the conditions and reservations in said order set forth, and Mississippi has been collecting the rates and charges therein provided for all gas sold in interstate commerce for resale as to all bills based on meter readings made after January 20, 1946.

(2) The 'Stipulation Settling And Dismissing Proceeding In So Far As It Pertains To Mississippi River Fuel Corporation' entered into by the General Counsel for the Commission and counsel for Mississippi and approved by this Commission on May 4, 1948, provides in part as follows:

'During the interval from January 20, 1946, to the present date Corporation has made extensive additions to its pipe line system to meet the increasing demands of ultimate consumers served by the gas distribution companies served by Corporation. These increments to pipe-line capacity have resulted in greatly changed factors in the costs and operations of Corporation's pipe line system.

'In view of these circumstances and the prospect of further increasing costs and changes in methods of operations it appears necessary in the public interest that adjustments equitable to both ultimate consumers and Corporation should be made in the rates and charges heretofore ordered by the Commission, commensurate with the service Corporation has been and now is being called upon to render to its gas distribution company cus-

tomers for resale to ultimate consumers. Corporation's conditions of service now vary greatly from the conditions of service considered by the Commission when it issued its order of November 9, 1945.

Wherefore, for the purpose of settling and terminating the proceedings in this matter insofar as it pertains to Corporation, it is hereby stipulated and agreed by and between Counsel for the Commission and Counsel for the Corporation as follows:

Corporation will file with the Commission, and the Commission will accept for filing, supplements to the presently effective rate schedules of Corporation which shall provide for the following rates and charges:

(1) A supplementary rate schedule effective for all bills based on meter readings made after January 20, 1946; through and including the month of September 1947 having a net monthly rate for firm gas composed of a demand component of \$1.00 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries; and

(2) A supplementary rate schedule effective as to all bills rendered in October 1947 and continuing thereafter having a net monthly rate for firm gas composed of a demand component of \$1.12 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries.

(3) On July 8, 1948, Mississippi tendered for filing with the Commission new schedules of rates and charges supplementary to the presently effective rate schedules which contain the rates and charges provided for in said stipulation and are to be effective upon the dates and for the periods therein specified.

Therefore, the Commission *orders* that:

(A) The Commission's approval on May 4, 1948, of said stipulation entered into by and between the General Counsel for the Commission and counsel for Mississippi be and the same hereby is confirmed.

(B) The schedules of rates and charges tendered for filing by Mississippi are accepted as being in full compliance with the stipulation heretofore referred to and the supplements listed in Appendix A hereto shall be effective for all bills based on meter readings made after January 20, 1946, and the supplements listed in Appendix B hereto shall be effective for all bills rendered in October 1947 and continuing thereafter (and shall be effective as to Mississippi's Rate Schedule FPC No. 26 from and after November 27, 1947, as indicated in said Appendices A and B) in accordance with the terms of said stipulation.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by this Commission in any proceeding now pending or hereafter instituted by or against Mississippi River Fuel Corporation.

(D) This proceeding in so far as it pertains to Mississippi hereby is declared to be terminated and dismissed.

"By the Commission.

/s/ Leon M. Fuquay
Secretary

"Date of Issuance: July 20, 1948"

[Appendices A and B refer only to rate schedule designations in the Commission files for the applicable periods and have been omitted herefrom.]

4. Pursuant to said rate schedules a settlement has been made of all amounts due Mississippi from each utility distributing company in Missouri and each such company has received in the rate settlement its proportionate share of the reduction to Mississippi resulting from the Commission order reducing rates of Interstate Natural Gas Company for the period of January 21, 1946 through September 1947. Said utility companies are in the process of passing on to the ultimate consumers the reduction in the rates of Mississippi which includes and gives effect to the reduction in rates of Interstate Natural Gas Company for the period of January 21, 1946 through September 1947.

5. To the extent that the petition seeks distribution to ultimate consumers of the proportionate part of the impounded funds for the period of January 21, 1946 through September 1947, this case has become moot and there is presented herein only the question of whether the Circuit Court's order as it relates to the period prior to January 1946 should be reviewed.

* * * Entered this 25 day of August, 1948.

/s/ JOHN P. RANDOLPH
Counsel for
Missouri Public Service Commission

/s/ JAMES LAWRENCE WHITE
Counsel for
Mississippi River Fuel Corporation

Appendix B.

IN THE

SUPREME COURT OF THE UNITED STATES**OCTOBER TERM, 1948.**

No. 212.

ILLINOIS COMMERCE COMMISSION, et al.*v.***INTERSTATE NATURAL GAS COMPANY, INCORPORATED, et al.**

STIPULATION FOR ADDITION TO RECORD.

It is hereby stipulated and agreed by and between counsel for the Illinois Commerce Commission, Petitioner herein, and counsel for Mississippi River Fuel Corporation, one of the Respondents herein, as follows:

The Court may consider all of the facts set forth herein as an addendum to the Record in its consideration of the petition for certiorari; such facts being as follows:

1. The petition on pages 5 and 6 states as follows:

"The present petitioner, Illinois Commerce Commission, and other administrative agencies of other States and Cities, also were permitted to and did intervene (R. 21-41, 67, 68-71, 81-87, 92-95). They and the Commission urged, in opposition to the claims of the four purchasing companies, that the *Central States* decision was not controlling and that the funds in question should be distributed equitably among the ultimate consumers of the gas, from whom

such funds had originally been collected, and should not be paid over to the immediate purchasers, who had acted but as intermediaries in the entire transaction of furnishing natural gas to the public. It was also pointed out and urged that the said four immediate purchasers were themselves 'natural gas companies' within the scope of the Natural Gas Act, whose rates for transportation and sale at wholesale were not subject to local regulation, and that the various voluntary rate reduction orders entered during the impoundment period showed that these four companies had been and were still earning not less than a reasonable rate of return on their interstate business, without the benefit (windfall) of the impounded excess. The petition of Illinois Commerce Commission also alleged in detail that a portion of the funds in the custody of the court had originally been contributed by consumers of gas public utility services in the State of Illinois and paid, in the form of rates for such service, to two local Illinois public utility companies under its jurisdiction and control, namely, the Illinois Power Company, and the Union Electric Power Company, of Illinois; and that the natural gas so consumed and paid for by the said Illinois consumers was gas furnished by Interstate through the facilities of Mississippi, which latter corporation acted only as an intermediary which had resold such gas to the aforesaid two Illinois public utilities which had resold it to Illinois consumers. It also tendered the assistance of its technical staff in formulating a plan for the distribution of such funds to the ultimate consumers and pointed out that such distributions to the ultimate consumers has successfully been effected in previous cases such as *Natural Gas Pipeline Company, Colorado Interstate Gas Company and Panhandle Eastern Pipe Line Company* (R. 68-69)."

The order reducing rates of Mississippi was entered in Docket G-462 and the reduced rates were ordered effective for all billings made after January 20, 1946. Said order was affirmed in part and reversed in part by the United States Court of Appeals for the District of Columbia (*Mississippi River Fuel Corporation vs. Federal Power Commission*, 163 Fed. 2d. 433).

2. The order of the Court of Appeals herein was entered May 12, 1947, rehearing denied July 28, 1947. Subsequent thereto a stipulation was entered into by and between counsel for the Federal Power Commission and counsel for Mississippi as follows:

**"UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION**

**"IN THE MATTER
of
MISSISSIPPI RIVER FUEL CORPORATION,
et al.**

Docket
No. G-462.

**"STIPULATION SETTLING AND DISMISSING PROCEEDING
IN SO FAR AS IT PERTAINS TO
MISSISSIPPI RIVER FUEL CORPORATION**

"In 1943, the Federal Power Commission, herein-after referred to as 'Commission', entered orders under the Natural Gas Act instituting an investigation of the reasonableness of all the rates subject to the Commission's jurisdiction then being charged by Mississippi River Fuel Corporation, hereinafter referred to as 'Corporation', and other respondents.

"After hearings in the proceedings, confined to the rates of Corporation and without prejudice to the investigation of other respondents, the Commission on November 9, 1945 issued an opinion and order (3 F. P. C. 340) in the proceedings directing Corporation to reduce the rates charged and received for the transportation and sale of natural gas by Corporation in interstate commerce to its utility customers for resale for ultimate public consumption.

"Subsequent to the date of the issuance of the Commission's order of November 9, 1945 Corporation filed with the Commission supplements to its then effective rate schedules making the reduction in rates and charges ordered by the Commission. These supplements were to be effective for all bills based on meter readings made after January 20, 1946.

"As finally accepted for filing by the Commission, by order in this Docket No. G-462 dated April 22, 1947, said schedules contained a statement as follows:

'Mississippi River Fuel Corporation (herein called Seller) is filing in the United States Circuit Court of Appeals a petition to review the Order of the Federal Power Commission entered November 9, 1945, as amended November 30, 1945, in Docket No. G-462, reducing rates of Seller. Accordingly, the filing of this supplement is not done voluntarily but is made under protest and solely because of the compulsion of said Order, and to avoid penalties which might be incurred in the event of a refusal to comply therewith. Seller reserves all rights against the Purchasers of natural gas under the schedules to which the following provisions are filed as a supplement, to collect the rates and charges contained in said schedules (after due credit for the amount paid under this supplement) in the event said Order of November 9, 1945, as amended November 30, 1945, is modified or set aside by final court decree. Until said final court

decreed, all gas delivered to the Purchaser by Seller shall be billed at the rates and under the terms and conditions herein set forth. Seller also will furnish the Purchaser with a monthly statement of the amount computed on the rates in effect prior to the filing of this Supplement.'

which statement was permitted to remain in said schedules without approval or disapproval by the Commission and solely as a means of notification to the public in general and to the customers of Corporation of the rights claimed by Corporation, and without prejudice to the right of the Commission to take such further action with respect to Corporation's rates and charges as the facts in law may permit or require.

"Subsequently the order reducing Corporation's rates was affirmed in part, and reversed in part, and the case remanded for further proceedings in accordance with the opinion by the United States Court of Appeals for the District of Columbia (Case No. 9181) decided May 28, 1947, petition for rehearing overruled July 28, 1947.

"The order reducing Corporation's rates also provided that when the order of the Commission reducing rates of Interstate Natural Gas Company, Incorporated, in Dockets G-149 and G-132 became validated by the Courts, Corporation should pass on the proper portion of that reduction to customers purchasing gas for resale. Such order was upheld by the Supreme Court of the United States, and the funds impounded with the United States Circuit Court of Appeals for the Fifth Circuit in that action have been ordered distributed to Corporation.

"During the interval from January 20, 1946 to the present date Corporation has made extensive additions to its pipe line system to meet the increasing demands of ultimate consumers served by the gas dis-

tribution companies served by Corporation. These increments to pipe-line capacity have resulted in greatly changed factors in the costs and operations of Corporation's pipe line system.

"In view of these circumstances and the prospect of further increasing costs and changes in methods of operations it appears necessary in the public interest that adjustments equitable to both ultimate consumers and Corporation should be made in the rates and charges heretofore ordered by the Commission, commensurate with the service Corporation has been and now is being called upon to render to its gas distribution company customers for resale to ultimate consumers. Corporation's conditions of service now vary greatly from the conditions of service considered by the Commission when it issued its order of November 9, 1945.

"Wherefore, for the purpose of settling and terminating the proceedings in this matter in so far as it pertains to Corporation, it is hereby stipulated and agreed by and between counsel for the Commission and counsel for the Corporation as follows:

"Corporation will file with the Commission, and the Commission will accept for filing, supplements to the presently effective rate schedules of Corporation which shall provide for the following rates and charges:

(1) A supplementary rate schedule effective for all bills based on meter readings made after January 20, 1946 through and including the month of September 1947 having a net monthly rate for firm gas composed of a demand component of \$1.00 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries; and

(2) A supplementary rate schedule effective as to all bills rendered in October 1947 and continuing

thereafter having a net monthly rate for firm gas composed of a demand component of \$1.12 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries.

The rates and charges specified for the period from January 21, 1946 through and including the month of September 1947 reflect and give effect to the reduction in rates of Interstate Natural Gas Company, Incorporated, for that period. While usually treated as a commodity cost, the reduction in this instance is given effect by reflecting it in the demand charge as above set forth.

This stipulation is subject to the approval of the Commission, and upon approval by the Commission, the Commission agrees that it will dismiss the proceeding before it docketed as *In the Matter of Mississippi River Fuel Corporation, et al.*, Docket No. G-462, in so far as it pertains to Corporation.

May 4, 1948

/s/ BRADFORD ROSS
General Counsel Federal
Power Commission
Attorney for Federal
Power Commission

April 21, 1948

/s/ WILLIAM A. DOUGHERTY
Attorney for Mississippi
River Fuel Corporation

Approved by the Federal Power Commission on May
4, 1948.

/s/ LEON M. FUQUAY
Secretary

3. Pursuant to said stipulation rate schedules were filed to carry out the terms thereof and an order was entered by the Federal Power Commission on July 20, 1948 as follows:

"UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

"Before Commissioners:

Nelson Lee Smith,
Chairman;

Thomas C. Buchanan,
Claude L. Draper,
Leland Olds, and
Harrington Wimberly.

July 20, 1948

"IN THE MATTER
of
MISSISSIPPI RIVER FUEL CORPORATION,
et al.

Docket
No. G-462.

"FINDINGS AND ORDER ACCEPTING THE FILING OF
SUPPLEMENTAL RATE SCHEDULES AND
TERMINATING PROCEEDING.

"Upon consideration of the orders previously entered in this proceeding and the stipulation entitled 'Stipulation Settling and Dismissing Proceeding In So Far As It Pertains to Mississippi River Fuel Corporation' entered into by the General Counsel for the Commission and Counsel for Mississippi River Fuel Corporation ('Mississippi'),

"The Commission finds that:

(1) On January 18, 1946, Mississippi tendered supplements to its then effective rate schedules for filing in purported compliance with the requirements of the Commission's orders of November 9, 1945, and November 30, 1945, which supplements were rejected, and on August 6, 1946, Mississippi submitted revised supplements to the then effective rate schedules which were accepted for filing by order issued September 30, 1946, as modified by order issued April 22, 1947, subject to the conditions and reservations in said order set forth, and Mississippi has been collecting the rates and charges therein provided for all gas sold in interstate commerce for resale as to all bills based on meter readings made after January 20, 1946.

(2) The 'Stipulation Settling And Dismissing Proceeding In So Far As It Pertains To Mississippi River Fuel Corporation' entered into by the General Counsel for the Commission and counsel for Mississippi and approved by this Commission on May 4, 1948, provides in part as follows:

'During the interval from January 20, 1946, to the present date Corporation has made extensive additions to its pipe line system to meet the increasing demands of ultimate consumers served by the gas distribution companies served by Corporation. These increments to pipe-line capacity have resulted in greatly changed factors in the costs and operations of Corporation's pipe line system.'

'In view of these circumstances and the prospect of further increasing costs and changes in methods of operations it appears necessary in the public interest that adjustments equitable to both ultimate consumers and Corporation should be made in the rates and charges heretofore ordered by the Commission, commensurate with the service Corporation has been

and now is being called upon to render to its gas distribution company customers for resale to ultimate consumers. Corporation's conditions of service now vary greatly from the conditions of service considered by the Commission when it issued its order of November 9, 1945.

Wherefore, for the purpose of settling and terminating the proceedings in this matter in so far as it pertains to Corporation, it is hereby stipulated and agreed by and between Counsel for the Commission and Counsel for the Corporation as follows:

Corporation will file with the Commission, and the Commission will accept for filing, supplements to the presently effective rate schedules of Corporation which shall provide for the following rates and charges:

(1) A supplementary rate schedule effective for all bills based on meter readings made after January 20, 1946, through and including the month of September 1947 having a net monthly rate for firm gas composed of a demand component of \$1.00 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries; and

(2) A supplementary rate schedule effective as to all bills rendered in October 1947 and continuing thereafter having a net monthly rate for firm gas composed of a demand component of \$1.12 per month per Mcf of Maximum Demand, and a commodity component of 13 cents per Mcf for all deliveries; and a net monthly rate for interruptible gas of 14 cents per Mcf for all deliveries.

(3) On July 8, 1948, Mississippi tendered for filing with the Commission new schedules of rates and charges supplementary to the presently effective

rate schedules which contain the rates and charges provided for in said stipulation and are to be effective upon the dates and for the periods therein specified.

"Therefore, the Commission *orders* that:

(A) The Commission's approval on May 4, 1948, of said stipulation entered into by and between the General Counsel for the Commission and counsel for Mississippi below and the same hereby is confirmed.

(B) The schedules of rates and charges tendered for filing by Mississippi are accepted as being in full compliance with the stipulation heretofore referred to and the supplements listed in Appendix A hereto shall be effective for all bills based on meter readings made after January 20, 1946; and the supplements listed in Appendix B hereto shall be effective for all bills rendered in October 1947 and continuing thereafter (and shall be effective as to Mississippi's Rate Schedule FPC No. 26 from and after November 27, 1947, as indicated in said Appendices A and B) in accordance with the terms of said stipulation.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by this Commission in any proceeding now pending or hereafter instituted by or against Mississippi River Fuel Corporation.

(D) This proceeding in so far as it pertains to Mississippi hereby is declared to be terminated and dismissed.

"By the Commission.

/s/ LEON M. FUQUAY,
Secretary

"Date of Issuance: July 20, 1948"

(Appendices A and B refer only to rate schedule designations in the Commission files for the applicable periods and have been omitted herefrom.)

Entered into this 3rd day of September, 1948.

/s/ GEORGE F. BARRETT
Attorney General of the State of Illinois,
Attorney for
Illinois Commerce Commission,
Petitioner

/s/ JAMES LAWRENCE WHITE
Counsel for
Mississippi River Fuel Corporation